

AG Contract No.: KR06-0761TRN
ADOT ECS File No.: JPA 06-081
Project No.: CM-PVY-0(002)A
Project: Lincoln Drive Sidewalks
Section: 32nd Street – Invergordon Road
TRACS No.: SS553 01C
Budget Source Item No.:

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND

THE TOWN OF PARADISE VALLEY

THIS AGREEMENT is entered into this date August 23, 2006, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF PARADISE VALLEY, acting by and through its MAYOR and TOWN COUNCIL (the "TOWN").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project lies within the boundary of the Town and has been selected by the Town; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The Town, in order to obtain Federal funds for the construction of the project, is willing to provide Town funds to match Federal funds in the ratio required or as finally fixed and determined by the Town and FHWA, including actual construction engineering and administration costs (CE).
6. The interest of the State for this project is in the acquisition of Federal funds for the use and benefit of the Town and is the designated agent for the Town. Funds expended for the project, are authorized by reason of Federal law and regulations.

NO. 28385
Filed with the Secretary of State
Date Filed: 8/23/06
Janice K. Brown
Secretary of State
By: [Signature]

7. The work embraced in this Agreement is for the addition of a sidewalk on the south side of Lincoln Drive from 32nd Street to Invergordon Road, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project. The estimated construction costs are as follows:

Construction TRACS No. SS553 01C

Estimated Federal Aid Funds @ 94.3% (capped)	\$ 400,000.00
Estimated Town Funds @ 5.7%	\$ 24,178.00
Estimated Town Funds @ 100%	<u>\$1,178,900.00</u>
*Total Estimated Cost of the Project	<u>\$1,603,078.00</u>

***(Includes 15% CE and 5% project contingencies)**

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State Shall:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

b. Upon approval by FHWA, and with the aid and consent of the Town and the FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the Town, to whom the award is made for and enter into a contract(s) with a firm(s) for the construction of the project.

c. Enter into a Project Agreement with FHWA on behalf of the Town covering the work encompassed in said construction contract and will request the maximum Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the Town shall be responsible for any overage.

d. Upon execution of this Agreement, invoice the Town for reimbursement to the State for the Town's estimated share of the Project, currently estimated at \$1,203,078.00. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual costs.

e. Not be obligated to maintain said Project, should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The Town Shall:

a. Upon execution of this Agreement designate the State as authorized agent for the Town.

b. Deposit funds with the State in an amount equal to the difference between and the total cost of the work provided for in this Agreement and the amount of Federal aid (capped) received.

c. Consent to any inspections performed by the State, provide records or audit any books of the Town in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. The Town is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

e. Provide for cost and, as an annual item in the Town's budget, proper maintenance of the Project including all of the Project components.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the Town, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, the Town agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

3. These terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the Town terminates this Agreement, the State shall in no way be obligated to maintain said project.

4. This Intergovernmental Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: 602-712-7424

Town of Paradise Valley
Attention: Town Engineer
6401 East Lincoln Drive
Paradise Valley, Arizona 85253-4399
Phone: 480-348-3573


11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF PARADISE VALLEY

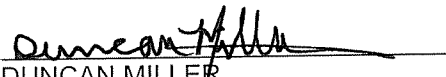
STATE OF ARIZONA

Department of Transportation

By 
ED WINKLER
Mayor

By 
DALE BUSKIRK
Division Director

ATTEST

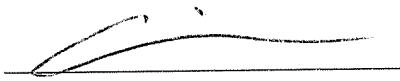
By 
DUNCAN MILLER
Town Clerk

ATTORNEY APPROVAL FORM FOR THE TOWN OF PARADISE VALLEY

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the TOWN, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 5th day of August, 2006.



Town Attorney

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6 **RESOLUTION NUMBER 1131**

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8 **A RESOLUTION OF THE TOWN OF PARADISE VALLEY,**
9 **ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL**
10 **AGREEMENT WITH THE STATE OF ARIZONA**
11 **DEPARTMENT OF TRANSPORTATION FOR THE**
12 **CONSTRUCTION OF SIDEWALK IMPROVEMENTS**
13 **ADJACENT TO LINCOLN DRIVE IN PARADISE VALLEY**
14

15 WHEREAS, Arizona Revised Statutes, Section 11-951 et seq., provide that public
16 agencies, including cities and towns, may enter into intergovernmental agreements for joint
17 or cooperative action; and

18 WHEREAS, Congress has authorized appropriations for Transportation
19 Improvement Program ("TIP") grants, including, but not limited to, the construction of
20 streets and sidewalks;

21 WHEREAS, the State and Federal Highway Administration implements the TIP
22 grants through various agencies, including the Arizona Department of Transportation
23 ("ADOT") and the Maricopa Association of Governments ("MAG"); and

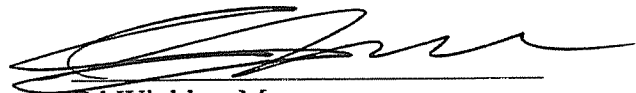
24 WHEREAS, MAG approved a TIP grant award to the Town of Paradise Valley
25 ("Town") in the amount of \$500,000 for the design and construction of a sidewalk on the
26 south side of Lincoln Drive in the Town from 32nd Street to Invergordon Road (the
27 "Sidewalk Project"); and

28 WHEREAS, the engineering design of the sidewalk is now complete, complete
29 construction plans have now been prepared, and the next step necessary prior to the
30 issuance of bids for the construction of the Sidewalk Project is the execution of an
31 intergovernmental agreement with ADOT (the "IGA," a draft copy of which is attached to
32 this Resolution as Exhibit A) is;

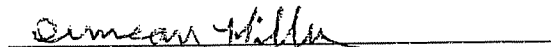
1 WHEREAS, adoption of this Resolution will authorize the Town Manager to make
2 final revisions to minor provisions in the IGA, execute the IGA, and take all steps
3 necessary to complete the construction of the Sidewalk Project;

4 NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of
5 Paradise Valley, that the Town Manager is hereby authorized to make final changes to
6 minor provisions of the IGA, to execute the IGA, and to make all payments required to
7 ADOT as are required by the terms of the IGA and to take all other steps necessary to
8 complete the Sidewalk Project pursuant to the now completed construction plans.

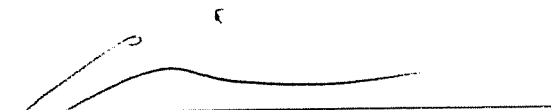
9 PASSED AND ADOPTED by the Mayor and Council of the Town of Paradise
10 Valley, Arizona, this 13th day of July, 2006.

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15 Ed Winkler, Mayor
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18 ATTEST:
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22 Duncan Miller, Town Clerk
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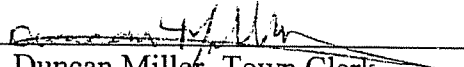
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25 APPROVED AS TO FORM
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29 Andrew M. Miller, Town Attorney
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2 **CERTIFICATION**


3 I, Duncan Miller, Town Clerk hereby certify that the foregoing is a full, true and correct
4 copy of Resolution Number 1131 duly and regularly passed and adopted by vote of the
5 Town Council of Paradise Valley at a meeting thereof duly called and held on the 13th day
6 of July, 2006. That the Resolution appears in the minutes of the meeting, and that the
7 same has not been rescinded or modified and is now in full force and effect.

8 I further certify that the municipal corporation is duly organized and existing, and
9 has the power to take the action called for by the foregoing Resolution.
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Duncan Miller, Town Clerk



**OFFICIAL SEAL
OFFICE OF THE TOWN CLERK
TOWN OF PARADISE VALLEY
DUNCAN MILLER, TOWN CLERK**

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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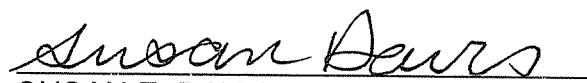
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR06-0761TRN (**JPA 06-081**), an Agreement between public agencies, i.e., The State of Arizona and The Town of Paradise Valley, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 17, 2006

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:975055
Attachment